IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Smt. Patasi & Anr. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 1153/2005
against the order dated 18-8-2005 passed
by the Additional Sessions Judge, Ratangarh,
Camp Sujangarh, in Criminal Revision No.34/99.

...

Date of Order: October 05, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Sandeep Mehta, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. G.L. Khatri, for the non-petitioner No.2.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 18.8.2005 passed by the Additional Sessions Judge, Ratangarh, Camp Sujangarh (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 34/1999, whereby the revision petition filed by the petitioners against the order dated 30-8-1999 passed by the Assistant Collector, Sujangarh (for short, "the Executive Magistrate" hereinafter) was dismissed.

I have heard learned counsel for the parties and carefully gone through the orders passed by the Revisional Court as well as the Executive Magistrate.

Proceedings under Sections 145 and 146 of the Code were initiated on a complaint filed by the Station House Officer, Police Station, Sujangarh before the Executive Magistrate. The parties filed their respective claims and produced documents in evidence. The Executive Magistrate, relying on the document i.e. agreement to sell, alleged to have been executed by Choth Mal, the husband of petitioner No.1 and father of petitioner No. 2 in favour of non-petitioner No.2 Smt. Mohini Devi, as also the oral evidence produced by the parties, more particularly by the non-petitioner No.2, came to the conclusion that on the date of the preliminary order under sub-section (1) of Section 145 of the Code, the non-petitioner No.2 was in possession of the property in dispute and accordingly declared her possession and also released the property from the Receiver directing the Receiver to hand over the property in dispute to the non-petitioner No.2. It appears that thereafter since 1999, the non-petitioner No.2 is in possession of the property in dispute. That order came to be challenged by the petitioners before the Revisional Court and the Revisional Court, on examination of the record, did not find any error in the conclusion arrived at by the Executive Magistrate and dismissed the revision petition.

Both the courts below concurrently found the non-petitioner No.2 in possession of the disputed property. It is contended by the learned counsel for the petitioners that the Executive Magistrate has based his findings mainly on the Furd taking possession by the Receiver in the presence of son of the non-petitioner No.2. Merely because he was present, it cannot be said that he was in possession of the property in dispute. Be that as it may, the documents clearly show that when the possession was taken by the Receiver, the son of the non-petitioner No.2 was present on the spot and he is a signatory to the documents. At any rate, none of the petitioners were present there and, therefore, it cannot be said that the possession was taken from the petitioners. Even it is not the case of the petitioners that the possession of the disputed property was taken from them by the Receiver. There is an agreement to sell alleged to have been executed by Choth Mal, the husband of petitioner No.1 and father of petitioner No.2, dated 19-10-1987, by which the disputed property was sold to non-petitioner No.2 by Choth Mal for a consideration of Rs. 4662/-. The evidence produced by the non-petitioner No.2 finds support and corroboration from the agreement to sell. In the circumstances, therefore, it cannot be said that both the Courts below ignored any material piece of evidence while arriving at the conclusion and declaring the non-petitioner No.2 in

possession of the disputed property. Since 1999, the non-petitioner No.2 is in possession of the property in dispute. If the petitioners have any civil right with regard to the disputed property, it is always open for them to get their title determined, if any, available to them. No case for interference in the inherent jurisdiction is made out.

The criminal miscellaneous petition is, therefore, dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

mcs